OFFICE OF ADMINISTRATIVE LAW JUDGES

WASHINGTON, D.C. 20424-0001

DEPARTMENT OF THE AIR FORCE GRISSOM AIR FORCE BASE, INDIANA
Respondent

and

AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES, LOCAL 3254, AFL-CIO

Charging Party

Case Nos.
CH-CA-30390
CH-CA-30478
CH-CA-30491

Major David L. Frishberg

Captain Jeffrey A. Rockwell

For the Respondent

Philip T. Roberts, Esquire

For the General Counsel

Mr. Melvin D. Smith

For the Charging Party

Before: WILLIAM B. DEVANEY

Administrative Law Judge

DECISION

Statement of the Case

This proceeding, under the Federal Service Labor-Management Relations Statute, Chapter 71 of Title 5 of the United States Code, 5 U.S.C. § 7101, et seq.[1], and the Rules and Regulations issued thereunder, 5 C.F.R. § 2423.1, et seq., concerns: (a) whether Respondent repudiated the ground rules agreement for negotiations over realignment of the Base; (b) whether Respondent repudiated a training agreement; and (c) whether Respondent refused to bargain on the Union's demand to renegotiate the Merit Promotion Plan.

Case No. CH-CA-30390 was initiated by a charge filed on January 28, 1993 (G.C. Exh. 1(a)) and Case No. CH-CA-30478 was initiated by a charge filed on March 1, 1993 (G.C. Exh. 1(c)). The Consolidated Complaint and Notice of Hearing in Case Nos. CH-CA-30390 and CH-CA-30478 issued on November 22,

1993 (G.C. Exh. 1(e)) and set the hearing for a date, time and location to be determined. Case No. CH-CA-30491 was initiated by a charge filed on March 9, 1993 (G.C. Exh. 1(a)-1) and the Complaint issued on November 22, 1993, and also set the hearing for a date, time and location to be determined. By Notice dated December 8, 1993, the hearings in Case Nos. CH-CA-30390, 30478, 30491, 30397, 30398 and 30596 were set for January 26, 1994, in Indianapolis, Indiana (G.C. Exhs. 1(i), 1(g)-1). A hearing was duly held on January 26, 1994 in Indianapolis, Indiana, in Case No. CH-CA-30596; but the other cases set for hearing on January 26, 1994, were not reached and, at hearing, were indefinitely postponed inasmuch as agreement on a rescheduled hearing date could not be reached. By Order dated February 3, 1994 (G.C. Exhs. 1(m), 1(k)-1), corrected by Order dated February 9, 1994 (G.C. Exhs. 1(o), 1(m)-1), the hearings in Case Nos. CH-CA-30390, 30397, 30398, 30478, 30491 and 30836 were rescheduled for February 24 and 25, 1994, in Kokomo, Indiana. General Counsel filed a Motion to Consolidate all of the above cases and the Orders of February 9, 1994, also stated that the Motion to Consolidate, which was opposed by Respondent (G.C. Exhs. 1(q), 1(o)-1), would be resolved at hearing. A hearing was duly held on February 24, 1994, in Kokomo, Indiana, before the undersigned. At the commencement of the hearing, General Counsel's Motion to Consolidate was granted in part, and denied in part, and Case Nos. CH-CA-30390, 30478 and 30491 were consolidated. Because General Counsel's formal Exhibits in CH-CA-30390 and 30478 were numbered G.C. Exhs. 1(a) through 1(n) and in Case No. CH-CA-30491 were G.C. Exhs. 1(a) through 1(p), to distinguish the two sets of exhibits, a dash 1 ("-1") was appended to General Counsel's formal Exhibits in Case No. CH-CA-30491.

All parties were represented at the hearing, were afforded full opportunity to be heard, to introduce evidence bearing on the issues involved, and were afforded the opportunity to present oral argument which each party waived. At the conclusion of the hearing, March 24, 1994, was fixed as the date for mailing post-hearing briefs which time was subsequently extended on motion of Respondent, to which the other parties did not object, for good cause shown, to April 24, 1994. Respondent and General Counsel each timely mailed an excellent brief, received on, or before, April 29, 1994, which have been carefully considered. Upon the entire record, including my observation of the witnesses and their demeanor, I make the following findings and conclusions:

Findings

1. The American Federation of Government Employees, Local 3254, AFL-CIO (hereinafter, "Union") is the exclusive representative of a unit of employees appropriate for collective bargaining at Grissom Air Force Base, Indiana (hereinafter, "Respondent" or "Grissom"). The host unit at Respondent was the 305th Air Refueling Wing, an active duty unit. The 434th Air Refueling Wing, a reserve unit, was a tenant. In 1991, the Commission on Base Closures recommended, and the President approved, that, although Grissom would not be closed, it should be realigned as a reserve installation. Pursuant to that decision, the 305th Air Refueling Wing would be deactivated and its planes distributed to other Bases; and the 434th Air Refueling Wing, which also has a reserve fighter unit, the 930th, as a component, would become the host (Tr. 37-41). The realignment is to be completed September 30, 1994 (Tr. 89).

2. The Union was advised of the realignment and requested bargaining on the impact and implementation of the realignment. On February 12, 1992, the parties signed a Ground Rules Agreement for "Base Realignment and Contract Negotiations" (G.C. Exh. 12). This Agreement provides, in part, as follows:

"1. Each team will consist of four negotiators including the Chief Negotiator . . .

. . .

"4. The parties will negotiate Realignment issues on Thursdays from 0800 to 1130 . . .

. . .

"6. Negotiations will continue until an agreement is reached or until negotiations reach impasse . . .

. . .

"9. The union teams (Contract and Realignment) will be given a total of 144 hours a week of official time, after March 5 (or when Realignment negotia-tions begin), to be used for both negotiations and preparation time. This time is agreed to be used on Wednesdays, Thursdays and Fridays.

"10. It is agreed that the 144 hours provided in the above section (#9) will be used for both Realignment and on going Contract negotiations.

. . .

"12. On-going Contract negotiations will be held on Friday mornings. . . ." (G.C. Exh. 12).

3. On March 9, 1992, the parties signed an Agreement on "Implementation of Grissom AFB Regulation 40-1, MeritPromotion Plan" (G.C. Exh. 13). This Agreement contained the following reopening provision,

"b. It is also agreed that there will be an 'opening clause' whereas either party may request to renegotiate the MPP annually 1 Jan-31 Jan with the understanding that the plan in place at the time a request is made to renegotiate will continue until both parties agree to proposed changes in writing." (G.C. Exh. 13). [amended on April 8, 1992, to add, following

the word "writing": "or reach agreement through impasse procedures." (G.C. Exh. 16)].

4. By letter dated January 6, 1993 (G.C. Exh. 35), the Union gave notice, in accordance with the reopening provision set forth in paragraph 3, above, of its desire to renegotiate the MPP. By letter dated February 11, 1993, Mr. Thomas R. Arsenault, Civilian Personnel Officer, agreed, ". . . that negotiations should be accomplished as soon as manpower is available. Management will have two representatives when we go to the table." (G.C. Exh. 37). Mr. Arsenault also stated, "If you need preparation time to develop your proposed changes to the existing plan, please coordinate with my office." (G.C. Exh. 37).

By letter dated February 18, 1993, Mr. Arsenault affirmed his intention, ". . . that negotiations should be accomplished as soon as manpower is available" (G.C. Exh. 38), but pointed out the upcoming Mock Reduction In Force, ". . . takes precedence over any other priority at this time . . ." and further stated that, "It is my opinion that the RIF will have more of an impact than the MPP . . ." (G.C. Exh. 38). Respondent contented that the Union insisted upon negotiating ground rules before submitting its proposals (G.C. Exhs. 35, 36; Tr. 251); nevertheless, at the time of the hearing, February 24, 1994, well over a year after the Union's request to renegotiate the MPP, Respondent had not met to negotiate anything about the MPP.

5. On December 3, 1992, the parties signed a Memorandum of Understanding entitled, "Training and Development" (G.C. Exh. 23). By letter dated January 13, 1993 (G.C. Exh. 27), Union President Fred K. Hartig advised Respondent, in part, that,

"In accordance with applicable provisions of the Training and Development MOU of 3 Dec 92, this Local does hereby appoint Troy Prior and Joe Brown . . . to act as the primary members of the closure/realignment training and development committee. I will serve as an alternate, and the Union member from the unilaterally defunct closure/realignment negotiating team to provide guidance and initiatives at the first meeting." (G.C. Exh. 27).

The first meeting of the Closure/Realignment Training and Development Committee was held on January 29, 1993 (Res. Exh. 10). By letter dated February 2, 1993, Mr. Arsenault wrote Union President Hartig, in part, as follows:

"1. This letter is to confirm our verbal agreement at the initial training and development meeting last Friday, the 29th of Jan 93 regarding para-graph 2b. The official time (24 hours per month, 8 hrs x 3) is granted by the Parties (in lieu of 'to be deducted from official time allotted in ground rules established for the Realignment Negotiating Team'). Also, additional time may be granted if agreed to by the Parties (in lieu of 'by the Union and Management

Realignment Negotiating Team').

"2. In reference to paragraph 2c, the opening meeting was attended by the Union President and the Civilian Personnel Officer, in lieu of 'One Union member and one Management member from the Realign-ment Negotiating Team'. Additionally, the committee will submit all plans and recommendations to the Parties in lieu of 'the Realignment Negotiating Team for approval in accordance with paragraph one (1) of this agreement'.

. . ." (G.C. Exh. 29)

After its initial meeting on January 29, 1993, the Committee, beginning in March, met each month, and in March twice[2], through 1993 and continuing in 1994 (Tr. 231-232). Minutes for the meetings of: March 25, April 8, May 18, June 10, July 8, August 12 and December 2, 1993, are part of Respondent Exhibit 10. On September 28, 1993, the Realignment Negotiating Team/All Parties met to review the recommendations made by the Committee to date (Res. Exh. 10).

6. By letter dated August 2, 1991, Union President Hartig had advised Respondent, in part, as follows:

"As previously agreed upon, both parties have the option of picking two articles from the L/M Agreement for negotiations this year. Our two selections are Articles 29 and 22 . . ." (Res. Exh. 1) (Emphasis supplied).

As noted earlier, the reality of realignment resulted in the joining of negotiations for realignment and contract, with Thursday devoted to realignment issues and Friday to contract negotiations (G.C. Exh. 12). Negotiations on Articles 22 and 29 extended into 1992 when agreement was reached by the parties on Article 29 and the Union requested mediation on Article 22.[3] By letter dated August 6, 1992, the Union informed Respondent, in part, that,

"In accordance with article XXXXVII of the L/M agreement, you are hereby notified of our intention to renegotiate the entire contract this fall." (Res. Exh. 5; see, also, Res. Exhs. 6, 8) (Emphasis supplied).

By letter dated March 25, 1992, the Union had set forth eighteen issues, ". . . associated with closure/realignment[4] that we as a union will exercise our bargaining rights on." (G.C. Exh. 14). Negotiations

on these issues proceeded, one at a time, i.e., when agreement was reached on a matter they signed a memorandum of understanding and then moved to another issue (Tr. 184-185). Through September 1992, the parties had reached agreement on only about three or four issues: Labor-Management Adjustment Committee (G.C. Exh. 15; Tr. 66); Reduction-In-Force (G.C. Exh. 18; Tr. 18); another Reduction-In-Force (930th/434th); and Department of Defense's Priority Placement Plan (G.C. Exh. 19; Tr. 73). On, or about, November 23, 1992, the parties reached agreement on Training and Development and set December 3, 1992, as the date for execution of the agreement (Tr. 91). In the meantime, about September or October 1992, the parties ceased meeting on Friday for contract negotiations. The Union, as noted, was seeking to proceed with contract negotiations (Res. Exh. 5) while Respondent wanted to postpone negotiations until September 1994, when the realignment of Grissom would be completed (Tr. 211-213). The minutes of the October 20, 1992, Labor-Management Relations Committee meeting, do not reflect any agreement by the Union to postpone contract negotiations but only that,

"3. Mr Hartig said the union may be willing to postpone negotiations until next year as long (sic) we were willing to continue to negotiate Base Closure and Realignment and other issues dealing with all the changes." (G.C. Exh. 20, par. 2.g.3.).

At the realignment negotiating session of December 3, 1992, there were two items on the agenda: first, to sign the Training MOU; and second, negotiate over the Union's November 12, 1992, proposal on parking (G.C. Exh. 21). When the parties arrived, the Union put a third proposal on the agenda: Base Facilities (G.C. Exh. 22; Tr. 81-82). The Training and Development MOU was duly signed by all negotiators (G.C. Exh. 23), copies were made and distributed.

At this point, instead of continuing negotiations, Ms. Sula Smith, Respondent's Chief Negotiator, handed Mr. Hartig, the Union's Chief Negotiator, the following letter,

"1. You requested, on behalf of Local 3254, to enter into full contract negotiations. After much discussion, you and management agreed that nego-iations could be postponed until August 1993. We requested that the verbal agreement be put in writing to assure complete understanding. You did submit to the Civilian Personnel Office an agreement to be signed by management and Local 3254 expressing that you would agree to postponing the contract negotiations if certain stipulations would be agreed to by management.

"2. After consideration of the entire proposal to postpone the contract negotiations, management cannot agree to all the stipulations requested so therefore, we will enter into full contract negotiations as you previously requested.

"3. This means that ground rules for full contract negotiations must be negotiated. The Parking Proposal submitted to the realignment negotiating team applies to current contract article XXXXV; as such, we will defer negotiations on that subject until full contract negotiations begin. Our original agreement regarding contract negotiations resulted in negotiating the two articles of your choice. Management did not agree to add, supple-ment, or change any other contract article. An agreement was reached on one of the articles, Performance Evaluations, and you have unilaterally requested mediation on the compressed work schedule portion of the Work Schedule article. Since we will be entering into full contract negotiations, we will be prepared to finalize that article at that time. With that said, the ground rules for realignment and contract negotiations are no longer valid.

"4. All realignment negotiations, the ground rules associated with realignment negotiations, and all official time for realignment negotiations will cease as of the end of the negotiations meeting on 3 December 1992. Any future meetings to discuss the Training Committee plans and recommendations will be by mutual consent of the current assigned chief negotiators.

"5. Please contact me to discuss the date, time, and place for the initial meeting to discuss the ground rules for full contract negotiations. Management will appoint two members to negotiate the ground rules." (G.C. Exh. 24).

The Union angrily protested, requested a recess to caucus and left the room. After a few minutes, Respondent's negotia-tors concluded that there was no prospect for the resumption of meaningful negotiations at that time and they left the room. On the way out, Ms. Smith told Mr. Hartig that the negotiating session was terminated. No further realignment negotiations have taken place (Tr. 98).

Conclusions

1. Respondent violated §§ 16(a)(1) and (5) by its failure and refusal to negotiate the Merit Promotion Plan.

The Union on January 6, 1993, fully in accordance with the reopening provision of the Agreement (G.C. Exh. 13), gave notice of its desire to renegotiate the Merit Promotion Plan (G.C. Exh. 35). By letter dated February 11, 1993 (G.C. Exh. 36), the Union protested the delay and stated that, "This local will meet with

representatives from the agency to begin negotiations on ground rule for this issue at 0900 on 24 Feb 93. . . ." (G.C. Exh. 36); but Mr. Arsenault by letter dated February 18, 1993 informed the Union he could not meet on February 24 because he would be "TDY next week" and would contact the Union upon his return (G.C. Exh. 38). Although he subsequently talked to the Union about MPP (Tr. 246), nothing was ever done to schedule negotiations notwithstanding that he conceded that the Union, ". . . wanted to reopen it. And our intent was to reopen it . . ." (Tr. 248).

Conceivably, Respondent might have justified a refusal to negotiate until after April 1, 1993, when the preparation for the mock RIF was to be completed (G.C. Exh. 38); but there was no plausible or justifiable reason for its failure and refusal to negotiate to February 24, 1994.(5) That Respondent believed other matters were more important neither excuses nor justifies its failure and refusal to negotiate the Union's demand to renegotiate the Merit Promotion Plan. Absent agreement, and Respondent agreed that the Union never receded from its demand to renegotiate the MPP, Respondent was under a duty to negotiate in good faith on the Union's demand. Respondent's excuses would have made "Alibi Ike" proud, e.g., implementing MOU programs (Tr. 247); my Chief of Affirmative Employment transferred about March 20, 1993 (Tr. 248); etc.(6) It is certainly true that the Union requested ground rules negotiations; but ground rules negotiations are part of the good faith negotiating process, Department of Defense, Dependents Schools, 14 FLRA 191, 193 (1984); Department of Health and Human Services, Region VII, Kansas City, Missouri, 14 FLRA 258, 259 (1984) and a refusal to negotiate ground rules before substantive proposals violates §§ 16(a)(1) and (5). Harry S. Truman Memorial Veterans Hospital, Columbia, Missouri, 16 FLRA 944 (1984); Department of Health and Human Services, Social Security Administration, and Office of Hearings and Appeals, Region II, 17 FLRA 368 (1985). Moreover, the record shows that it had been the practice of both parties first to negotiate ground rules, e.g., G.C. Exhs. 3, 4, 12, 24 (where Respondent demanded ground rules negotiations for contract negotiations even though, by its fiat, proposals were already "on the table"). Accordingly, I find that Respondent's failure and refusal to bargain timely on the Union's demand violated §§ 16(a)(1) and (5). Army and Air Force Exchange Service, McClellan Base Exchange, McClellan Air Force Base, California, 35 FLRA 764, 769 (1990).

In addition to a cease and desist order and posting, General Counsel requests that Respondent be ordered,

". . . to give retroactive effect to any agreement reached concerning Merit Promotion, to the extent that that agreement would have altered the outcome of a prior Merit Promotion action. . . .";

and further, that Respondent be ordered,

". . . to rerun an (sic) RIF actions which might have been affected by such an improper Merit Promotion action." (General Counsel's Brief, p. 20).

General Counsel bottoms this request on a presumed "computer glitch". Thus, he states, inter alia,

". . . the record indicates that some employees were not considered for positions because of a

computer glitch. . . ." (General Counsel's Brief, p. 19).

But there is no evidence whatever of a "computer glitch". To the contrary, so far as the record shows, the computer selection of best qualified candidates worked precisely as it was intended to work. Thus, Mr. Melvin Smith testified,

"Under the new system, you just got a phone call if you were being considered. Okay? And then you would tell the person, 'Yes, I want the job' or 'No, I don't want the job.' And if you said 'yes,' they put your name on a list and when they got enough names, they sent it to the supervisor. If you didn't get called, you never even knew you were being considered for a job." (Tr. 25).

Mr. Hartig testified,

". . . one of the big changes that happened with this Merit Promotion Plan, we used to have vacancy announcements . . . and it gave you a certain time frame that you could put in for a job. . .

"Well, this new system . . . did away with all vacancy announcements. . .

. . .

". . . what this program did is, their computer would identify the top 10 or 15 most highly-qualified people on the base for that position.

"And what they do is get on the phone and say, 'Hey, do you want to be promoted?' And what we were finding out was that some people weren't being called and should have -- <u>possibly should have</u>. . .

. . .

". . . <u>We can't say it was incorrect</u>, but we had reason to believe that it was, certainly.

"Q. What reason to believe? What information did you obtain?

"A. Well, just, like, some of the people that were coming out as highly qualified and some of the people that were getting phone calls shouldn't have been getting phone calls, <u>maybe, or</u>

wouldn't have under the vacancy announcement system.

"And, also, we felt like, possibly, there were people who were being considered for these jobs and getting these phone calls who, had the vacancy been announced, they wouldn't even have put in for the job in the first place." (Tr. 115-117).

Of course, the Agreement of March 9, 1992, stated, in relevant part, that, "a. The major change in the Merit Promotion Plan (MPP) is the activation of the Promotion Placement Referral System (PPRS). . . ." and, "d. . . . When PPRS is used to fill a position, a staffing specialist/clerk will contact all employees on the automated list . . ." (G.C. Exh. 13, 1a. and d.). From its inception, some employees complained to the Union about the lack of posting (Tr. 115, 116, 163) and the Union assured them that, ". . . come January of '93 . . . we were certainly going to entertain getting back to the table and getting these things corrected." (Tr. 113-114). Dissatisfaction with automated listing, certainly; but no evidence that any employee was improperly promoted, indeed, little evidence that there were any promotions. Mr. Arsenault did state, ". . . we weren't doing a lot of merit promotion. That was very insignificant during this realignment year." (Tr. 246). Because the record affords no justification for the additional remedy sought it will be denied. Moreover, Mr. Arsenault also testified that sometime before the hearing, the date not having been fixed, ". . . we started going back to the manual announcement of the system through the position vacancy announcement process." (Tr. 246).

Mr. Hartig testified, and Respondent did not show to the contrary, that

"Well, what we, as the union, had thought, that we would be getting copies of all these vacancies and we would know exactly what was going on, and we would be able to keep track of this entire program.

"Well, that's not how it worked out at all. . . ." (Tr. 115)

"Q. Now, the union was getting copies of all positions filled, weren't they?

"A. Well, that was the way it was supposed to work. We weren't, no.

. . .

"A. No, not all of them. We were getting some of them.

. . .

"A. What we were supposed to get is a weekly printout of the tracking of a job from its inception to its completion.

"Q. And what you're saying is you weren't getting those?

"A. On some of the jobs that were being filled, no, they did not show up on that tracking system at all." (Tr. 161-162).

Inasmuch as Mr. Hartig testified that the Union was not getting the information specified in paragraph 1c. of the March 9, 1992, Agreement (G.C. Exh. 13) as to each promotion(7), I shall order that Respondent comply with paragraph 1c. of the March 9, 1992, MPP Agreement.

2. Respondent did not repudiate the Training Agreement.

To be sure, the Training and Development MOU of December 3, 1992 (G.C. Exh. 23) makes reference to the "Realignment Negotiating Team" as follows:

a) "One Union member and one Management member from the Realignment Negotiating Team will attend the first organizational meeting . . ." (Par. 2c.)

b) "The committee will submit all plans and recommendations to the Realignment Negotiating Team for approval. . . ." (Par. 2c.)

c) ". . . 24 hours per month (8 hrs x 3), to be deducted from official time allotted in ground rules established for the Realignment Negotiating Team. Additional time may be granted if agreed to by the Union and Management Realignment Negotiating Team." (Par. 2b.)

Further, Respondent terminated all realignment negotiations and abolished, ". . . the ground rules associated with realignment negotiations, and all official time for realignment negotiations. . . ." on December 3, 1992 (G.C. Exh. 24). Nevertheless, the Union, on January 13, 1993, designated its members for the Closure/Training Committee; the Union attended the initial meeting of the Committee on January 29, 1993; the parties agreed that: (a) Regarding paragraph 2b., "The official time (24 hours per month, 8 hrs x 3) is granted by the Parties (in lieu of 'to be deducted from official time allotted in ground rules established for the Realignment Negotiating Team'). Also, additional time may be granted if agreed to by the Parties (in lieu of 'by the Union and Management Realignment Negotiating Team')."; (b) Regarding paragraph 2c., the opening meeting was attended by the Union President and the Civilian Personnel Officer, in lieu of 'one Union

member and one Management member from the Realignment Negotiating Team'."; and (c) Further regarding paragraph 2c., ". . . the committee will submit all plans and recommendations to the Parties in lieu of 'the Realignment Negotiating Team for approval. . . .'" (G.C. Exh. 29). The Committee, beginning in March 1993, met regularly; on September 28, 1993, the Realignment Negotiating Team/All Parties met to review the recommendations of the Committee; and the Committee continued to meet and function into 1994.

Union President Hartig's lament that the Committee's implemented proposals were, ". . . not through the Realignment Committee" (Tr. 112) and General Counsel's refrain that the Union, ". . . did not agree with the dismissal of the Realignment Team" (General Counsel's Brief, p. 14), are no more than a quibble. The record shows, as Mr. Hartig conceded, ". . . that committee itself did a fine job and it's still continuing to this day . . ." (Tr. 111), that Respondent has not repudiated the Training Agreement, but, to the contrary, that it faithfully has been carried out. Accordingly, the allegations of paragraphs 12, 13 and 17 of the Complaint (Case No. CH-CA-30478) are hereby dismissed.

3. Respondent violated §§ 16(a)(1) and (5) by its unilateral termination of realignment negotiations, by its unilateral abrogation of the Ground Rules Agreement of February 12, 1992, and by its refusal to bargain in good faith.

On December 3, 1992, Respondent unilaterally terminated realignment negotiations (G.C. Exh. 24). There is no question whatever that realignment issues remained for resolution. Thus, the Union's November 12, 1992, proposal on parking (G.C. Exh. 21) and its December 3, 1992, proposal on Base Facilities (G.C. Exh. 22) were specific agenda items and most of the eighteen realignment issues set forth by the Union's letter of March 25, 1992, remained to be resolved as agreement had been reached only on three or four issues by December 3, 1992. I commend counsel for Respondent for his interesting, indeed ingenious, analysis and construction of U.S. Department of Health and Human Services, Social Security Administration, Baltimore, Maryland, 47 FLRA 1004 (1993); Internal Revenue Service, Washington, D.C., 47 FLRA 1091 (1993); and Sacramento Air Logistics Center, McClellan Air Force Base, California, 47 FLRA 1161 (1993). Nevertheless, his defense based upon this analysis and construction is rejected. In reality, it is no more than a "red herring" interposed to draw attention away from Respondent's unlawful unilateral action. Whether an issue, such as the Union's Parking proposal, could be negotiated as a contract matter, because the subject matter was already "covered by" or "contained in" the existing collective bargaining agreement, is immaterial. The realignment aspects of parking, for example, was part of the realignment negotiations, agreement had not been reached nor were the parties at impasse. Respondent could not lawfully unilaterally terminate those on-going negotiations. Stated otherwise, Respondent's refusal to continue realignment negotiations was a refusal to bargain in good faith. Ogden Air Logistics Center, Hill Air Force Base, Utah and Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 39 FLRA 1381, 1391 (1991); U.S. Department of the Air Force, Headquarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 36 FLRA 912, 915-916 (1990); Internal Revenue Service, Washington, D.C. and Internal Revenue Service, Denver District, Denver, Colorado, 27 FLRA 664 (1987); United States Department of The Treasury, Internal Revenue Service and United States Department of The Treasury, Internal Revenue Service, Houston District, 25 FLRA 843 (1987); Social Security Administration, 18 FLRA 511, 512, 523-525 (1985). Moreover, Respondent's unilateral termination violated paragraph 6 of the Ground Rules Agreement of February 12, 1992, which provides, in material part, that

"6. Negotiations will continue until an agrement is reached or until negotiations reach

impasse. . . ." (G.C. Exh. 12).

Respondent's unilateral abrogation of the Ground Rules Agreement of February 12, 1992, violated §§ 16(a)(5) and (1) of the Statute. Department of Health and Human Services, Social Security Administration, 44 FLRA 870, 881 (1992); Adjutant General, State of Ohio, Ohio Air National Guard, Worthington, Ohio, 21 FLRA 1062, 1065 (1986); American Federation of Government Employees, Local 1923, AFL-CIO 20 FLRA 749, 756-757 (1985); Great Lakes Program Service Center, Social Security Administration, Department of Health and Human Services, Chicago, Illinois, 9 FLRA 499 (1982) United States Department of Labor, 7 FLRA 688, 697 (1982); see, also, 375th Combat Support Group, Scott Air Force Base, Illinois, 46 FLRA 640, 671 (1992); Panama Canal Commission, Balboa, Republic of Panama, 43 FLRA 1483, 1484 (1992); motion for reconsideration denied, 45 FLRA 1075 (1992); Rolla Research Center, U.S. Bureau of Mines, Rolla, Missouri, 29 FLRA 107, 115 (1987).

Respondent's failure to bargain in good faith was demonstrated, not only by its unilateral termination of realignment negotiations and by its unilateral abrogation of the parties Ground Rules Agreement, but by the totality of the circumstances. U.S. Department of The Air Force, Head-quarters, Air Force Logistics Command, Wright-Patterson Air Force Base, Ohio, 36 FLRA 524, 531 (1990). Pursuant to the Ground Rules Agreement of February 12, 1992, the parties met on Thursday to negotiate Realignment issues and on Friday for Contract issues until sometime in September or October 1992, when they ceased meeting on Fridays to negotiate Contract issues. The Ground Rules Agreement provided for official time for both realignment and contract negotiations and for preparatory activities for each.

The record is silent as to the circumstances of the cessation of Friday Contract negotiations; however, the record is clear that the Union never agreed to forego contract negotiations, and, contrary to Respondent's assertion, did not agree to postpone contract negotiations until August 1993, but, to the contrary insisted on the resumption of contract negotiations to the point of filing an unfair labor practice charge on December 4, 1992, based on Respondent's failure and refusal to negotiate contract matters. (Res. Exh. 8).

Respondent's letter of December 3, 1992, at the very outset, begins with a misrepresentation, namely, that Mr. Hartig, "agreed that negotiations could be postponed until August 1993." The record shows that Mr. Hartig on October 20, 1992, said the Union might be willing to postpone negotiations until 1993 if negotiations on Base Closure and Realignment and other issues dealing with the changes were continued (G.C. Exh. 20, par. 2.g.3). Moreover, when Friday Contract negotiations were suspended, the parties had no trouble proceeding under the Ground Rules Agreement; but when Respondent sought to mandate the reverse, i.e., cessation of realignment negotiations and resumption of contract negotiations, it asserted ". . . the ground rules for realignment and contract negotiations are no longer valid" and ". . . . ground rules for full contract negotiations must be negotiated." (G.C. Exh. 24). The unilateral termination of the prior (February 12, 1992) Ground Rules Agreement not only was unlawful, but Respondent's insistence on new ground rules to cover contract negotiations already covered by the parties' prior agreement was in bad faith, delayed contract negotiations, and subjected the Union and the Federal Service Impasses Panel to wholly unnecessary and wasteful conduct to arrive at a ground rules agreement for contract negotiations which already was fully and adequately covered by the parties prior agreement.

Having found that Respondent violated §§ 16(a)(1) and (5) of the Statute, it is recommended that the Authority adopt the following:

ORDER

Pursuant to § 2423.29 of the Rules and Regulations, 5 C.F.R. § 2423.29, and § 18 of the Statute, 5 U.S.C. § 7118, it is hereby ordered that the Department of The Air Force, Grissom Air Force Base, Indiana, shall:

1. Cease and desist from:

(a) Terminating and repudiating the terms of the February 12, 1992, Agreement entitled, "Ground Rules, Base Realignment and Contract Negotiations".

(b) Failing and refusing to bargain in good faith with American Federation of Government Employees, Local 3254, AFL-CIO (hereinafter, "Union"), the exclusive representative of an appropriate unit of our employees, on Base Realignment issues.

(c) Failing and refusing to bargain in good faith with the Union on its demand to renegotiate the Merit Promotion Plan and failing or refusing to comply with the notice provisions of the MPP Agreement of March 9, 1992.

(d) In any like or related manner, interfering with, restraining or coercing its employees in the exercise of their rights assured by the Statute.

2. Take the following affirmative action in order to effectuate the purposes and policies of the Statute:

(a) Upon request of the Union, reinstate the Agreement of February 12, 1992, entitled, "Ground Rules, Base Realignment and Contract Negotiations".

(b) Upon request, bargain in good faith with the Union over Base Realignment issues[(8)].

(c) Upon request, bargain in good faith with the Union on its demand to renegotiate the Merit Promotion Plan; and, further, Respondent in accordance with paragraph 1c. of the Agreement of March 9, 1992, shall not make any selection of candidates for promotion until at least five calendar days after the Union has been notified of a request to fill a position, and, further, Respondent will inform the Union of the status of any fill request through its completion, which notification will be accomplished on a weekly basis via the SF-52 tracking system.

(d) Post at all of its facilities at Grissom Air Force Base where bargaining unit employees represented by the Union are located, copies of the attached Notice on forms to be furnished by the Federal Labor Relations Authority. Upon receipt of such forms, they shall be signed by the Commander, and shall be posted and maintained for 60 consecutive days thereafter, in conspicuous places, including all bulletin boards and other places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that such Notices are not altered, defaced, or covered by any other material.

(e) Pursuant to § 2423.30 of the Regulations, 5 C.F.R. § 2423.30, notify the Regional Director, Chicago Region, Federal Labor Relations Authority, 55 West Monroe Street, Suite 1150, Chicago, IL 60603-9729, in writing, within 30 days from the date of this Order, as to what steps have been taken to comply herewith.

IT IS FURTHER ORDERED that paragraphs 12, 13 and 17 of the Consolidated Complaint in Case Nos. CH-CA-30390 and 30478 [Case No. CH-CA-30478] be, and the same are hereby, dismissed.

WILLIAM B. DEVANEY

Administrative Law Judge

Dated: July 19, 1994

Washington, DC

NOTICE TO ALL EMPLOYEES

AS ORDERED BY THE FEDERAL LABOR RELATIONS AUTHORITY

AND TO EFFECTUATE THE POLICIES OF THE

FEDERAL SERVICE LABOR-MANAGEMENT RELATIONS STATUTE

WE HEREBY NOTIFY OUR EMPLOYEES THAT:

WE WILL NOT fail or refuse to bargain in good faith with American Federation of Government Employees, Local 3254, AFL-CIO (hereinafter, "Union"), the exclusive representative of our employees, on Base Realignment issues.

WE WILL NOT fail or refuse to bargain in good faith with the Union on its demand to renegotiate the Merit Promotion Plan.

WE WILL NOT fail or refuse to comply fully with paragraph 1c. of the Agreement of March 9, 1992.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights assured by the Federal Service Labor-Management Relations Statute.

WE WILL, upon request of the Union, reinstate the Agreement of February 12, 1992, entitled, "Ground Rules, Base Realignment and Contract Negotiations".

WE WILL, upon request of the Union bargain over Base Realignment issues.

WE WILL, upon request of the Union, bargain in good faith with the Union on its demand to renegotiate the Merit Promotion Plan; and, further, WE WILL NOT pursuant to our agreement of March 9, 1992, make any selection of candidates for promotion until at least five calendar days after the Union has been notified of a request to fill a position, and, further, WE WILL inform the Union of the status of any fill request through its completion, which notification will be accomplished on a weekly basis via the SF-52 tracking system.

_____

(Activity)

Date: _____ By: _____

(Signature) (Title)

-2-

This Notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced or covered by any other material.

If employees have any questions concerning this Notice or compliance with any of its provisions, they may communicate directly with the Regional Director of the Federal Labor Relations Authority, Chicago Region, whose address is: 55 West Monroe, Suite 1150, Chicago, IL 60603-9729, and whose telephone number is: (312) 353-6306.

1. For convenience of reference, sections of the Statute hereinafter are, also, referred to without inclusion of the initial "71" of the statutory reference, i.e., Section 7116(a)(5) will be referred to, simply, as, "§ 16(a)(5)".

2. Presumably, to compensate for the failure to meet in February. See, Mr. Arsenault's letter dated February 19, 1993, and Mr. Hartig's appended handwritten acknowledgement (Res. Exh. 10).

3. After intervention by the Federal Service Impasses Panel in January 1993, the parties came to agreement on Article 22 (Tr. 256-259).

4. Inclusion of, "The existing L/M Agreement" as an issue to be negotiated as a realignment matter was not explained.

5. It is unnecessary to decide whether Mr. Arsenault made statements, at about the time he took over as Civilian Personnel Officer, to the effect that he thought his predecessor had let the Union run things at Grissom and that he was going to put a stop to it (Tr. 23, 136-138, 174-175), statements that Mr. Arsenault vigorously denied (Tr. 253-254, 255-256).

Whatever the reason, and Mr. Arsenault advanced many, the failure and refusal to negotiate on the Union's continuing demand for more than a year was a glaring violation of Respondent's duty to meet at reasonable times and to avoid unnecessary delays.

6. The shallowness of Respondent's assertion is heightened by the fact that from February 1993, there were no negotiations at all, i.e., Article 22, following intervention of FSIP with respect to compressed work schedules, was agreed upon in January 1993 (Tr. 256-259); negotiations on realignment had been terminated by Respondent on December 3, 1992 (G.C. Exh. 24); Ground Rules negotiations for contract negotiations began in January 1993, reached impasse in February 1993 (Tr. 269, 270) and, although the impasse was resolved by the Panel's assistance about Thanksgiving 1993 (Tr. 271), negotiations had not resumed by the time of the hearing (Tr. 272-273).

7. I am well aware that Mr. Hartig spoke of "positions filled" (Tr. 161) and that "On some of the jobs that were being filled . . . they did not show up on that tracking system at all." (Tr. 162). RIF placements (Tr. 247, 250) are governed by the RIF MOU (G.C. Exh. 18) and not the MPP (Tr. 250-251). Consequently, positions filled non-competitively under RIF procedures would not be subject to the MPP Agreement.

8. General Counsel's request that: (a) ". . . the Judge order the restoration of the status quo ante, including the recision of any realignment-related changes which have been implemented after December 3, 1992, until such time as negotiations pursuant to the February 12, 1992 Ground Rules Agreement are complete." (General Counsel's Brief, p. 18); or (b) "Alternatively, . . . that any agreement reached through negotiations pursuant to the February 12, 1992 Ground Rules Agreement be given retroactive effective to the extent that such agreement has monetary impact on bargaining unit employees." (General Counsel's Brief, p. 18), are denied. In the first place, the record affords no basis for a status quoante order. As noted, the parties before December 3, 1992, had negotiated some MOUs concerning Labor-Management Adjustment, Reduction-In-Force, Priority Placement and Training and Development. The record shows, for example, implementation of the Training and Development MOU, with the participation of the Union, throughout 1993 and into 1994 and it would be inimical to the policies of the Statute to interfere where the parties have lawfully resolved such matters. In like manner, application of the other agreements such as the RIF MOU was lawful and proper but under the requested order might be affected. In the second place, the requested order is too broad. Not only is no basis for a status quo ante order shown, but such order would reach any change including § 6(a) mandated changes. In the third place, at least to February 24, 1994, no bargaining on either realignment or contract issues had taken place. Respondent's stated objective was to combine the remaining realignment issues with

contract negotiations. In any event, the Union can negotiate any realignment issue not previously resolved, if it so elects, in resumed realignment negotiations.